IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :
THE HONOURABLE MR.JUSTICE R.BASANT

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

Crl.MC.No. 3294 of 2005(B)

AGAINST THE ORDER IN CC. 1768 /2005 IN
CC.1313/2004 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM
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PETITIONER: ACCUSED:
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1. ASIF MASOOD K.P., S/O. C.G. POOKOYA,
HOUSE NO.V/356, SAGARA, THOPPIL,
THRIKKAKARA, KOCHI.

2. DR. C.G. POOKAYA, HOUSE NO.V/356,
SAGARA, THOPPIL.

3. HAJIROMMABI, W/O. DR.C.G. POOKOYA,
HOUSE NO.V/356, SAGARA, THOPPIL.

4. SABEENA BEEGAM, DR.C.G. POOKOYA
HOUSE NO.V/356, SAGARA, THOPPIL.

BY ADV. SRI.T.M.ABDUL LATHEEF
SMT.P.RESHMA KABIR
SMT.P.VIJAYALAKSHMI.
SRI.A.MUHAMMED HASHIM

RESPONDENTS: COMPLAINANTS & STATE:
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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM.

2. SUB INSPECTOR OF POLICE, PANANGADU.

3. DR. BI. P.P., D/O. HAMZAKOYA,
RESIDING AT LADIES HOSTEL, CO-OPERATIVE MEDICAL
COLLEGE, G.C.D.A. ANNEX, MAVELI ROAD, GANDHI NAGAR
KOCHI-682 020, WORKING AT TUTOR, DEPARTMENT
OF MEDICIEN, CO-OPERATIVE MEDICAL COLLEGE,
KADAVANTHARA, KOCHI.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
SMT.K.K.RAZIA
SRI.SABU S.KALLARAMOOLA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 05/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

Crl.M.C.No.3294 of 2005

Dated this the 5th day of June, 2007

ORDER

Petitioners are husband, father-in-law, mother-in-law and sister-in-law respectively of the defacto complainant, ie. the 3rd respondent herein. The 3rd respondent filed a complaint alleging commission of the offences punishable, inter alia, under Section 498 A I.P.C against all the 4 accused persons. That complaint was referred to the police under Section 156(3) Cr.P.C. The police after investigation filed final report raising allegations against the 1st accused-the husband alone under Section 498 A I.P.C. Dissatisfied with the final report submitted by the police, the petitioner filed the complaint again (it is the same complaint which is filed, it is submitted) complaining about non inclusion of accused 2, 3 & 4 on the array of accused. The learned Magistrate after following the procedure under Section 200 Cr.P.C, issued process against accused 2 to 4. It appears that both the cases - on the basis of the final report against the 1st accused and the case against accused 2 to 4 on the private complaints are pending before the same court. The petitioners have now come to this Court with a prayer that the proceedings initiated against the petitioners may be quashed invoking the jurisdiction under Section 482 Cr.P.C. The 3rd respondent/complainant has entered appearance through

counsel. The counsel for the respondent contends that this petition is technically not sustainable in as much as the 1st accused who is the accused in the police charge case and accused 2 to 4 who are accused in a different case, have chosen to come together before this Court with this petition under Section 482 Cr.P.C. That technicality does not at all persuade me to reject the challenge in this Crl.M.C in an omnibus manner.

2. The two proceedings are closely inter related and connected that the conduct of the 4 accused persons coming together before this Court and seeking identical relief cannot be faulted. The proceedings against all of them have been initiated on the basis of a common private complaint against all the four. In these circumstances, that technicality does not persuade me to reject the Crl.M.C at the threshold.

3. I must alertly remind myself of the nature, quality and contours of the jurisdiction that I am called upon to exercise. I am requested to invoke and exercise the extraordinary inherent jurisdiction available under Section 482 Cr.P.C. It is trite that such jurisdiction is not to be invoked as a matter of course. Such jurisdiction can be invoked only sparingly and in exceptional cases, that too, only in aid of justice. The mere possibility of discharge or acquittal at later stages of the trial cannot therefore persuade the

Court to invoke the powers under Section 482 Cr.P.C to prematurely terminate the proceedings against the accused.

4. What are the reasons which the petitioners want to urge to justify the prayer for premature termination of proceedings ? First of all it is contended that the complaint is filed after divorce. After discussions at the Bar, the learned counsel for the petitioners submits that there is no absolute bar against cognizance being taken on the basis of a complaint filed by a divorced wife. The allegations of cruelty relate to the period during the period of valid marriage and the mere fact that the complainant has come to this Court after divorce is not sufficient to non suit her at the threshold. I do agree with the learned counsel for the petitioners that the allegations raised by such a divorced wife deserve to be considered carefully. To accept the principle that a divorced wife cannot file a complaint is dangerous and must lead to disastrous consequences. A husband guilty of cruelty need only divorce his wife anticipating proceedings under Section 498 A I.P.C. The mere fact that the 3rd respondent had filed the complaint after divorce is not in these circumstances sufficient to persuade me to invoke the powers under Section 482 Cr.P.C.

5. The learned counsel for the petitioner is correct in his submission that the Magistrate cannot mechanically take cognizance of the offence under Section 498 A I.P.C. The Section offers pregnant possibility for mischief at the hands of an unscrupulous wife/divorced

wife and therefore I am in agreement with the learned counsel for the petitioners that any court called upon to consider such a complaint must employ due care and caution while considering such a complaint. Of course it is trite that materials cannot be weighed in golden scales by the criminal court at that stage at the threshold. All that the Court is to consider is whether there is "sufficient ground to proceed". I agree with the learned counsel for the petitioner that this consideration must be alertly undertaken. The question is whether such application of mind has been employed by the learned Magistrate in the facts of this case.

6. The counsel contends that the parties belong to Lakshadweep, where there is no practice of dowry at all. If law were to be followed strictly, there could be no practice of dowry anywhere in India at this point of time in history. Acceptance of dowry is prohibited under law and in spite of that, the legislature was constrained to enact provisions like Section 498 A in the I.P.C by amendment and inclusion. Therefore, the fact that the customary law permitting or authorising the payment of dowry is not available in the Lakshadweep Island is no reason for the learned Magistrate not to take cognizance of the alleged offence under Section 498 A I.P.C.

7. The crucial and the final question to be decided is whether cognizance taken by the learned Magistrate is bad for the reason that adequate data is not furnished. I shall scrupulously avoid any detailed

discussion on merits about acceptability of the allegations or credibility of the data. Suffice it to say that I am not persuaded to agree that at this stage of the proceedings, powers under Section 482 Cr.P.C can or need be invoked on the ground that there is no sufficient allegations and data to attract culpability for the offence punishable under Section 498 A I.P.C against anyone of the accused. It follows from the above discussion that it is not necessary to invoke the jurisdiction under Section 482 Cr.P.C. The challenge raised must, in these circumstances, fail.

8. In the result, this Crl.M.C is, dismissed. I may hasten to observe that I have chosen only to hold that the powers under Section 482 Cr.P.C need not be invoked and the dismissal of this Crl.M.C will not in any way fetter the rights of the petitioner to raise all appropriate and relevant contentions before the learned Magistrate in the course of the trial. All their rights would survive including the right to claim discharge, I make it clear.

9. Send back the records forthwith to the learned Magistrate.

(R.BASANT, JUDGE)

rtr/-